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## **VIA HAND DELIVERY**

David M. Spooner  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Central Records Unit, Room 1870  
Pennsylvania Avenue and 14<sup>th</sup> Street, NW  
Washington, DC 20230

Re: Request for Comments – Antidumping Methodologies: Duty Drawback

Dear Mr. Spooner:

We submit these comments in response to the Department of Commerce's ("the Department") *Federal Register* notice, dated October 19, 2006, requesting public comments on its proposed methodology for calculating duty drawback adjustments in antidumping duty investigations. We are enclosing, pursuant to the Department's request, one original and six copies of this submission along with an electronic version on a CD-ROM.

Respectfully submitted,



Elliot J. Feldman  
John J. Burke  
Camilla Y. Chan

**I. THE DEPARTMENT'S PROPOSED METHODOLOGY VIOLATES THE PLAIN MEANING OF THE STATUTE REQUIRING DUTY DRAWBACK ADJUSTMENTS**

The Department's proposal to allocate the total amount of duty drawback received across all exports, regardless of the destination, is inconsistent with the plain meaning of the statute requiring duty drawback adjustments. The statute states that "{t}he price used to establish export price and constructed export price shall be (1) increased by (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, *by reason of the exportation of the subject merchandise to the United States.*" 19 U.S.C. §1677a(c)(1)(B) (emphasis added). An exporter who received a rebate on, or an exemption from, foreign import duties because it was exporting subject merchandise to the United States is entitled by law to an adjustment for the full amount of that duty drawback.

The Department's proposal would result in a duty drawback adjustment that would be different from that mandated by 19 U.S.C. §1677a(c)(1)(B). In some cases, the adjustment would be too little, in other cases, too much. Allocating all duty drawback that a company earned over all of its exports would make the adjustment reflect a portion of the duty drawback earned on exports to third countries, as well as the United States, and of all products, not just subject merchandise. At the same time it no longer would reflect the full amount of the duty drawback earned on the exports of subject merchandise to the United States. In both respects the proposal violates the statutory mandate to adjust for duty drawback earned "by reason of the exportation of the subject merchandise to the United States." The statute thus forbids any effect on

the duty drawback adjustment from third country exports or from non-subject merchandise.

## **II. THE DEPARTMENT'S PROPOSED METHODOLOGY IS CONTRARY TO THE PURPOSE OF THE DUTY DRAWBACK ADJUSTMENT**

The purpose of the duty drawback adjustment is to “preserve accurate price comparability between home market and United States prices.” See, e.g. *Duty Drawback Practice in Antidumping Proceedings*, 70 Fed. Reg. 37,764, 37,765 (June 30, 2005). The current methodology allows the Department to compare fairly and accurately the prices for goods sold in the home market with goods exported to the United States, but the proposed methodology would lead in some cases to an undervaluation, and in other cases an overvaluation, of the duty drawback received on exports to the United States of goods containing manufacturing inputs imported into the home country.

The duty drawback adjustment enables the Department to compare the price that the foreign producer could have charged in the home market for goods using imported inputs with the price that the exporter can charge in the United States for the same product.<sup>1</sup> When the foreign country provides a duty drawback upon export to the United States, the seller is able to charge a lower price in the United States than it would for the same goods in the home market. Under those circumstances, price comparability could be maintained only were the value of the drawback added to the U.S. price. See *Far East Machinery Co., Ltd., v. United States*, 699 F. Supp. 309, 314 (Ct. Int'l Trade 1988) (“*Far East Mach. II*”).

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<sup>1</sup> See *Avesta Sheffield, Inc. v. United States*, 836 F. Supp. 608, 611 (Ct. Int'l Trade 1993) (“The statute provides for the duty drawback adjustment without reference to any finding that the home market is reflective of duties.”).

The Department's proposal to allocate the duty drawback across all exports, including those to third countries, would distort the price comparability of goods exported to the United States. Should a respondent receive a duty drawback because of its exports to the United States, but not receive a drawback on its exports to a third country, the proposed allocation of the drawback across exports to both countries would lower the export price and raise the dumping margin. Conversely, should a respondent receive a duty drawback on its exports to a third country, but not on its exports of subject merchandise to the United States, the proposed allocation of the drawback across exports to both countries would raise the export price and lower the dumping margin. Either way, the result would be predictably inaccurate and therefore contrary to law.

**III. THE EXCEPTION PROPOSED BY THE DEPARTMENT WOULD NOT CURE THE STATUTORY INFIRMITY OF THE ALLOCATION PROPOSAL AND WOULD IMPOSE AN UNFAIR AND ONEROUS RECORD-KEEPING BURDEN ON EXPORTERS**

The Department proposes a limited exception to its allocation proposal where the producer can "directly trace the particular import-duty paid inputs through the subsequent production process and into particular finished goods that are exported to the United States." This exception would not cure the statutory infirmity of the allocation proposal because the statutory test is whether the foreign government provided the duty drawback based on the export to the United States, not on whether the original input could be traced physically through to the export. *See Far East Mach. II*, 699 F. Supp. at 312 ("{T}here is no requirement that specific input be traced from importation through exportation before allowing drawback on duties paid....") (citing

ITA, Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change (Nov. 1985) at 26).

The proposed exception also would impose an unnecessarily onerous burden upon foreign exporters. The duty drawback system permits exporters to recover duties paid on imports that are used as inputs for goods that are ultimately exported to and consumed in other countries. The Department has applied substitution principles to inputs that are used in exports.<sup>2</sup> The Court of International Trade previously endorsed the Department's use of substitution principles to "relieve it of the 'difficult if not impossible, task of determining whether the raw materials used in producing the exported merchandise actually came from imported or domestic sources.'" *Avesta Sheffield, Inc.*, 838 F. Supp. at 612 (citation omitted). The Department's proposal to require foreign exporters to undertake the "difficult, if not impossible" task of demonstrating that the same foreign inputs were used in the finished products exported to the United States in order to receive the full benefit of the duty drawback adjustment is unfair. Were such a requirement adopted, few exporters would be able to meet that requirement to receive the full benefit of the duty drawback adjustment.

The Department should continue to apply substitution principles as there is no logical reason for requiring exporters to trace specific inputs from importation through exportation before adjusting for duty drawback. Under the current practice, the Department requires that the foreign exporter show that it has imported a sufficient

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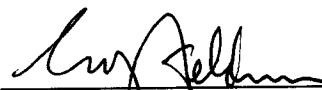
<sup>2</sup> "Under the principle of drawback substitution, '{the Department regards} drawback claims to be reflective of duties paid on the imported raw material if there is evidence of sufficient imports of that raw material to account for exports of the manufactured product.'" *Far East Machinery Co., Ltd. v. United States*, 688 F. Supp. 610, 612 (Ct. Int'l Trade 1988) ("*Far East Mach. I*") (quoting *Certain Circular Welded Steel Pipes and Tubes from Taiwan*, 51 Fed. Reg. 43,946, 43,947 (Dec. 5, 1986).

amount of raw materials and paid the requisite import duties to account for the exports and subsequent rebates. Where a foreign government provides the duty drawback by reason of exports to the United States, and the amount of drawback did not exceed the amount of imported inputs that could have gone into the exports to the United States, the Department should not, consistent with *Far East Mach.*, second-guess that foreign government's provision of duty drawback.

#### **IV. CONCLUSION**

The Department should continue to utilize its current methodology, which conforms with the requirements of the statute on duty drawback adjustments. The proposed methodology violates the plain meaning of the statute and conflicts with the purpose of the duty drawback adjustment. Furthermore, the physical tracing exception that the Department contemplates would not cure the statutory infirmity of the allocation proposal and would place an unnecessary and difficult burden on foreign exporters in order to receive the adjustment mandated by the statute.

Respectfully submitted,



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